FAIR POLITICAL PRACTICES COMMISSION
Memorandum

To: Chairman Randolph and Commissioners Blair, Downey, Huguenin and Remy

From: Emelyn Rodriguez, Counsel, Legal Division
John W. Wallace, Assistant General Counsel
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Subject: Adoption of Regulation 18421.3–Contributions Through Vendors

Date: October 26, 2006

I. EXECUTIVE SUMMARY

This memorandum discusses the proposed adoption of regulation 18421.3 under the Political Reform Act (the "Act"),[1] relating to monetary contributions collected by contract vendors or collection agents on behalf of candidates and committees. These changes are proposed to reflect existing Commission advice and to codify guidance provided in the *Turner* Advice Letter, No. A-05-020 (attached).

Due to the narrow scope of this project, no prenotice discussion was held. Staff has noticed the proposed regulation through the Office of Administrative Law, and no public comment has been received. Staff has made minor, non-substantive changes to the noticed version of the regulation to clarify the application of the rule to candidates and their controlled committees. This revised language is indicated in the regulation attached to this memorandum, and staff recommends adoption of these proposed amendments.

The proposed regulation 18421.3 would codify Commission advice in *Turner*, *supra*, and other previous advice letters, by clarifying that: (1) candidates or committees may contract with a vendor to establish accounts to collect contributions prior to transferring the funds to a campaign bank account; (2) vendors that collect such contributions are agents of the candidate or committee; (3) vendor fees may be deducted from contributions collected by the vendor prior to transmittal of the funds to the candidate or committee and these fees to be reported as expenditures from the campaign bank account at the time the fees are deducted or charged; and (4) the entire amount authorized by the contributor is the amount of the contribution.

[1] Government Code sections 81000 – 91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations.

II. BACKGROUND

Changes in technology have increased the options available to candidates and committees seeking assistance with fundraising. One of the options available to candidates and committees is the service of vendors or collection agents, many of whom gather contributions electronically (on the Internet, through credit card, debit card or other similar transaction) on behalf of the candidates or committees. The vendors often hold these contributions in temporary accounts and then later transfer the funds to the candidates' or committees' campaign bank accounts.

Vendors sometimes run a website through which they collect candidate contributions and contributor information. In the *Turner* advice letter, *supra*, staff advised that this is a permissible procedure for collecting contributions. Commission staff has also advised over the years that it is permissible for collection agents, banks and credit card companies to retain their fees from incoming contributions then transfer the remaining funds to the campaign bank account.[2]

Although these types of arrangements involving vendors have been permitted through long-standing staff advice, the Commission's statutes and regulations do not specifically address them.

Generally, staff has advised that candidates and committees may contract with vendors to collect contributions (specifically, those that raise contributions over the Internet) so long as the Act's disclosure, recordkeeping and other requirements are met.[3]

The Act imposes certain requirements on the receipt of contributions and the expenditure of campaign funds by candidates and committees. It also places special restrictions on candidates' campaign bank accounts. Section 85201, known as the "one-bank account" rule, requires each candidate to establish one campaign bank account for each specific candidacy. Its purpose is to provide an audit trail for contributions received and expenditures made. It also specifies that all campaign expenditures must be made from the candidate's campaign bank account.

However, a literal interpretation of the "one-bank account" rule would be inconsistent with current advice allowing vendors or collection agents to deduct their fees from contributions *prior* to transferring the amounts to a candidate's campaign bank

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[2] *Turner, supra,* where a candidate's controlled committee received contributions through a vendor that ran an Internet website, collected the contributions for the committee in a temporary account and later transmitted the contributions to the committee. The vendor would then retain its fee before transferring the funds to the committee. The Commission advised that this arrangement was permissible under the Act, pursuant to the parties' contractual agreement, so long as the contributions were promptly deposited in the committee's account. Such fees were considered expenditures from the campaign bank account at the time the fees were deducted or charged. See also *Buck-Walsh, Lavin* letters, *supra*, which reflect that the Commission has allowed for similar types of expenditures from a candidate's campaign bank account in accordance with section 85201 under certain limited circumstances, which include disclosure rules ensuring the preservation of an audit trail.

[3] *Turner; Buck-Walsh*, and *Lavin, supra.*.

account, because the expenditure or fees charged by the vendors are not actually "made from the [campaign bank] account." (Section 85201.)

This regulatory project was proposed last year by the Commission's Technical Assistance Division, to clarify the rules with regard to vendors or collection agents who gather contributions on behalf of candidates and committees because no existing regulation addresses whether these arrangements were permissible under the Act. The proposed regulation is intended to clarify that such transactions are permissible pursuant to section 83112 (which provides that the Commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of the Act) and consistent with the intent of the "one-bank account" rule under section 85201, if candidates follow certain reporting requirements.

Proposed regulation 18421.3 will also state that: (1) the entire amount authorized by the contributor is the amount of the contribution; and (2) any amounts deducted or charged by the vendor or collecting agent are deemed to be expenditures from the campaign bank account at the time the fees are deducted or charged. (Sections 82015 and 82025.) In addition, the proposed language will specify that nothing in the regulation should be construed to require the establishment of a bank account unless otherwise required by other provisions of this title.

The Commission, using its general authority to interpret the Act, has historically allowed narrow exceptions to the "one-bank account" rule.[4] For instance, regulation 18526 allowed for the reimbursement of expenditures—expenses that were *not* initially paid out of the campaign account—if certain disclosure and recordkeeping requirements were met, and there was no attempt to circumvent the purposes of the Act. This regulation is used to reimburse campaign workers or third parties who use their own funds to advance campaign costs. In its statement of reasons for adopting regulation 18526, staff noted that a literal interpretation of section 85201 "could result in no reimbursement of expenditures or could create contributions where none were intended."[5]

[4] Exceptions to the "one-bank account" rules are found in regulation 18526, which deals with the reimbursement of expenditures (as discussed above), and in regulation 18524, which allows candidates to: (1) establish one or more credit card accounts, which shall be used only for expenses associated with the candidate's election to the specific elective office designated in the statement of intention, or expenses associated with holding that office; (2) establish one petty cash fund (with no more than $100) at each campaign office; and (3) transfer funds from his or her campaign bank account to certificates of deposit, interest-bearing savings accounts, money market accounts, or similar accounts. However, prior to expenditure, the funds shall be redeposited in the candidate's campaign bank account.

[5] See Final Statement of Reasons for adopting regulation 18526. For instance, if a campaign aide purchased $100 worth of stamps for the campaign with his or her own funds, and then sought reimbursement for the expenditure from the campaign bank account, the purchase could not be recognized as a campaign expenditure because it was not directly made from the campaign bank account. So absent a clarifying regulation, the aide could contribute the stamps to the campaign, or the campaign could accept the stamps and report them as an in-kind loan from the aide and repay the aide for the stamps. However, either way, the transaction would be treated as a contribution subject to the reporting requirements and contribution limits of the Act.

Staff noted that regulation 18526 "is an attempt to delineate when expenditures are 'made from the [campaign bank] account' in a way that preserves the perceived intent behind Section 85201 while providing some flexibility to the campaigns, campaign staff, and third parties who provide goods and services to campaigns."[6]

The above rationale also applies to the current proposed regulation, as it deals with the issue of contract vendors collecting fees from contributions prior to depositing the funds into a candidate's campaign bank account. Under a strict interpretation of section 85201, the fees could not be considered campaign expenditures because they were not directly made from the campaign bank account. However, requiring the reporting of the full amount authorized by the contributor as the amount of the contribution, while allowing the vendor fees to be reported as expenditures from the candidate's campaign bank account, would preserve the public disclosure intent behind the "one-bank account" rule while allowing campaigns some flexibility to utilize various fundraising options.

Thus, new regulation 18421.3 would provide that candidates or committees may contract with a vendor to establish one or more accounts to collect contributions prior to transferring the funds to a campaign bank account. The proposed regulation would also clarify that a vendor that collects such contributions is an agent of the candidate or committee. In addition, the regulation specifies how vendor fees are to be reported, and when a contribution is "received" by candidates and committees who contract with such vendors. Lastly, it requires that contributions collected by such vendors be promptly transferred to the candidate's or committee's campaign bank account.

III. REGULATORY AMENDMENTS

As an initial matter, staff determined that the rules contained in the proposed regulation should apply not only to candidates, but also to non-candidate controlled committees. While non-candidate committees are not subject to section 85201's "one-bank account rule," the procedures also provide valuable guidance to non-controlled committees. Thus, except for the one-bank account discussion, the discussion of the regulatory language applies both to candidates and non-candidate committees alike.

In addition, staff has amended the noticed version of the regulation, to more clearly reflect the interaction of the "one-bank account" rule under section 85201 and the new rule. The new language is shown double-underlined, while deleted language appears with a strike-through.

"One-Bank Account" Rule and Vendor Accounts:

When campaigns contract with vendors to solicit contributions and these vendors place the collected contributions into a temporary vendor holding account, this account is separate from, and not considered part of, a candidate's bank account. Therefore, the

[6] "Possible Emergency Regulation 18526 and Pre-Notice Discussion of Regulation 18526 Regarding Reimbursement of Expenditures From the Campaign Bank Account," by Commission Counsel Margaret W. Ellison, dated March 24, 1989, p. 3.

restrictions of the "one-bank account" rule under section 85201 and regulation 18524 (which are applicable only to candidates) do not technically apply to these vendor accounts. The proposed regulation clarifies that the establishment of these vendor accounts are permissible under the Act, and that vendors may deduct their fees prior to transferring the contributions to candidates' campaign bank accounts without violating the "one-bank account" rule. This is reflected in proposed language in subdivision (b), line 17 stating: "The provisions in subdivision (a) apply to candidates and their controlled committees, notwithstanding Government Code section 85201 and 2 Cal. Code Regs. section 18524."

Vendors as Agents:

After examining regulation 18432.5(a)(1) staff determined that such vendors or electronic collection agents would clearly not fall under the definition of "intermediary" because the candidate or committee would not consider the vendor as "the true source of the contribution."[7]

Thus, these vendors would be considered "agents" of the candidates (or committees), and the rules set forth in regulation 18421.1 (which states when a contribution is "made" or "received" for purposes of the campaign disclosure provision of the Act) apply to the reporting of the receipt and making of contributions collected by these vendors. Therefore, language is included beginning on line 10 stating that the "rules set forth in 2 Cal. Code Regs. section 18421.1" apply to these contributions. With regard to electronic contributions, under regulation 18421.1(e), the candidate or committee obtains possession or control of electronic contributions, when the vendor (who is the agent), obtains possession or control over the payment information or the funds, whichever is earlier.[8]

The proposed regulation also includes language requiring these contributions be transferred or deposited into the bank account "promptly" as defined in Government Code section 84306. "Promptly" is defined under section 84306 as "not later than the closing date of any campaign statement the committee or candidate for whom the contribution is intended is required to file." This is included to ensure that there is consistency in the time frame for transferring of the funds to the candidate's or committees' bank accounts.

Vendor Fees:

Vendors and collection agents, banks and credit card companies, as a matter of regular business practice, retain their fees from incoming contributions, pursuant to a

[7] Regulation 18432.5 states that a person is an intermediary for a contribution if any of the following applies: "(1)[t]he recipient of the contribution would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution. (2) The person is an intermediary pursuant to Regulation 18419."

[8] Please note that regulation 18421.1 was recently amended with regard to electronic installment payments. These electronic payments are reported as received when the candidate or committee, or agent of the candidate or committee, obtains possession or control over the funds.

contract with a candidate or committee, and then transfer the remainder to the campaign bank account. Consistent with previous advice, and in accordance with the intent of Section 85201 to provide full disclosure of campaign contributions and expenditures, language was added on line 12 stating that: "The entire amount authorized by the contributor is the amount of the contribution." In addition, the fees authorized by the candidate or committee to be charged or deducted "by the vendor or collecting agent are deemed to be expenditures from the campaign bank account at the time the fees are deducted or charged." (Regulation 18421.3, lines 13-15.)

Proposed regulation 18421.3 would state that:

"~~Notwithstanding Government Code section 85201 and 2 Cal. Code Regs. section 18524, a~~ (a) A candidate or committee may contract with a vendor or collecting agent to establish one or more accounts to collect contributions prior to transferring the funds to a campaign bank account. These contributions are deemed to be received by the candidate or committee upon receipt by the vendor pursuant to rules set forth in 2 Cal. Code Regs. section 18421.1 and must be transferred to the candidate's or committee's campaign bank account 'promptly' as defined in Government Code section 84306. The entire amount authorized by the contributor is the amount of the contribution. Any amounts deducted or charged by the vendor or collecting agent are deemed to be expenditures from the campaign bank account at the time the fees are deducted or charged.

(b) Nothing in this regulation should be construed to require the establishment of a bank account unless otherwise required by other provisions of this title. The provisions in subdivision (a) apply to candidates and their controlled committees, notwithstanding Government Code section 85201 and 2 Cal. Code Regs. section 18524.

IV. STAFF RECOMMENDATION

Staff recommends that the Commission approve the adoption of regulation 18421.3.

Attachments:
Turner Advice Letter, No. A-05-020
Regulation 18421.3